

# **ADVANCED CELL PHONE FORENSICS CONFERENCE**

February 8, 2019  
APAAC Training Room  
Phoenix, Arizona



## **TRIAL PREPARATION USING CELL PHONE TECHNOLOGY**

Presented by:

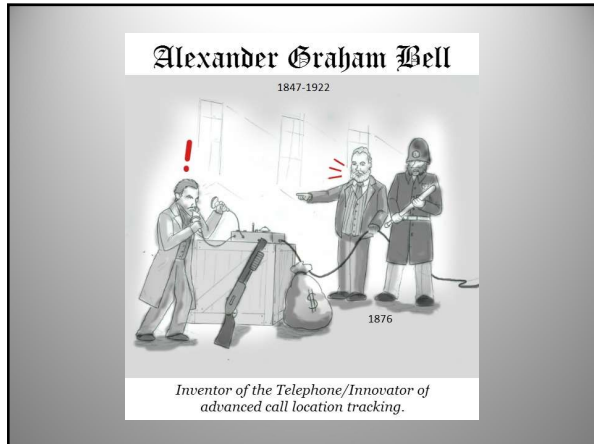
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Distributed by:

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EXECUTIVE DIRECTOR



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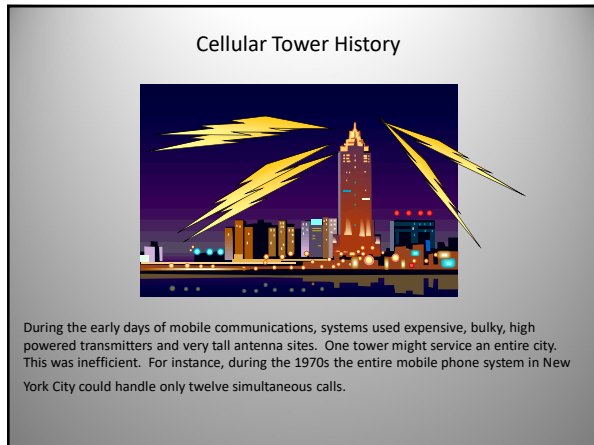
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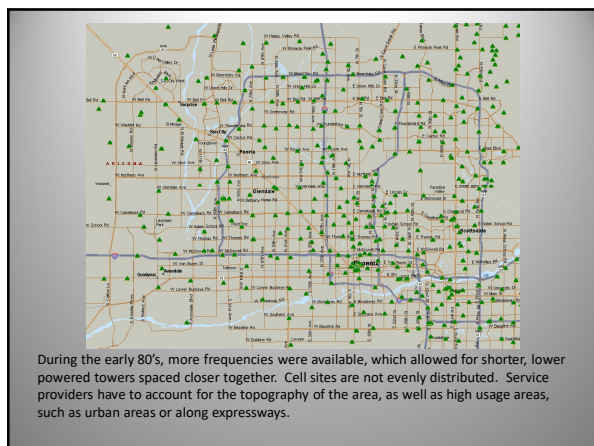
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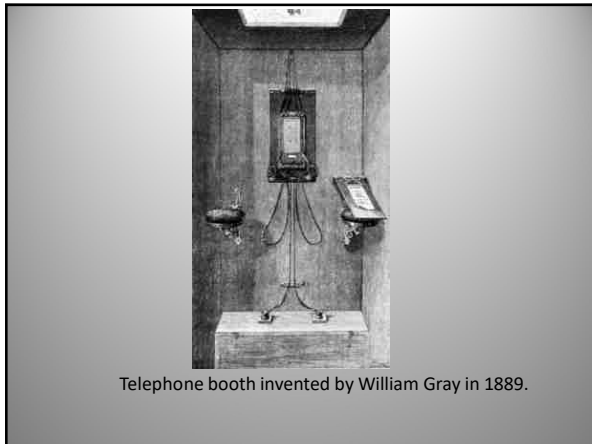
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REVIEWING/CHARGING CASES WITH CELL PHONE AND CELL TOWER TECHNOLOGY

- Reasonable likelihood of conviction
- In-custody (48 hour rule) vs. Basket case
- Facts of case(s)
- Evidence that this individual committed a crime(s)
- Police Reports
- Scientific Evidence-DNA, Fingerprints
- Video
- Witnesses
- Statements
- Cell Phone/Cell Tower evidence

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- Who owns the phone? 
- Who used the phone? 
- Who possessed the phone? 

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- Records
- Conversations
- Texts
- Internet Usage
- Photos
- Maps-locations of towers used and proximity to crime(s)
- Patterns/locations of calls/usage
- What phone/tower records obtained by police

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### TRIAL PREPARATION

Witnesses needed to get cell phone records into evidence

- Custodian of Records
- Service Provider Engineer (to discuss how cell towers work and verify analysts report/maps/tower locations)
- FBI Cellular Analysis Survey Team (CAST) or local police department expert
- Analysts/Creators of maps or diagrams
- Other witnesses to corroborate phone number(s)/locations

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### TRIAL PREPARATION

- Meet with your expert.
- Have expert assist you with questions and exhibits for trial.
- You want to be on the same page.
- Have exhibits enlarged and/or put into PowerPoint for opening and closing arguments.
- Timeline, cell tower locations, text and other communications.
- KISS
- Interview the defense expert with assistance and/or presence of your expert.
- Get your subpoenas out early; experts, especially for the cell phone carrier, they are going to need time to plan their schedule. Chances are they are coming from out of state.

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## TRIAL

- What type of jurors?
- Don't lose sight of KISS for the jury.
- GPS vs. Cell phone/Cell tower technology
- How to link cell phone to defendant; someone else possessed my cell phone defense (1.3 million smart phones were stolen last year)
- Enlarge your exhibits and PowerPoint slides showing the locations of cell towers and relationship to the crimes
- Highlight phone records you want your expert to focus on.
- Introduce your scene photographs with cell towers, timeline and text/other communications.
- Incorporate your cell phone/tower exhibits into your opening and/or closing.

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Martin Cooper invented the first portable cellular phone in 1973.



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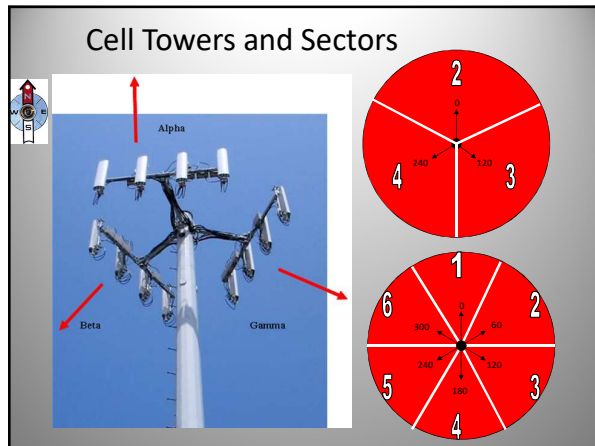
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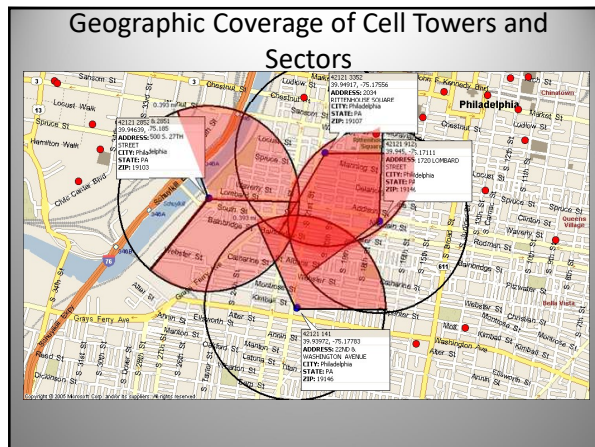
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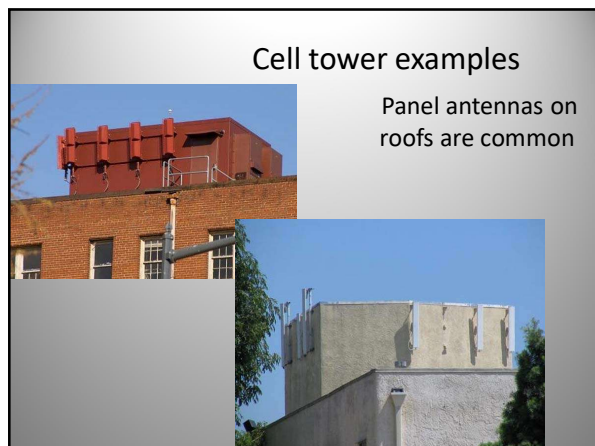
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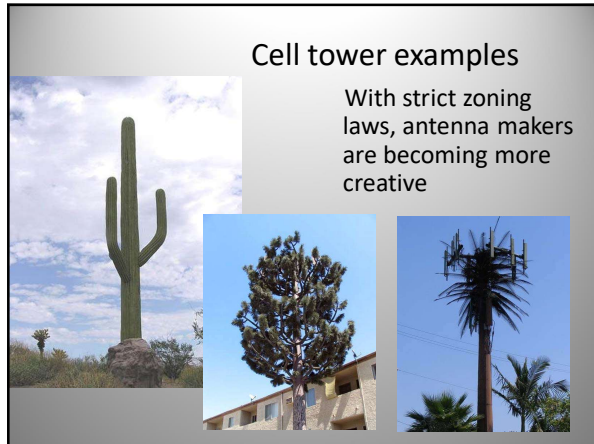
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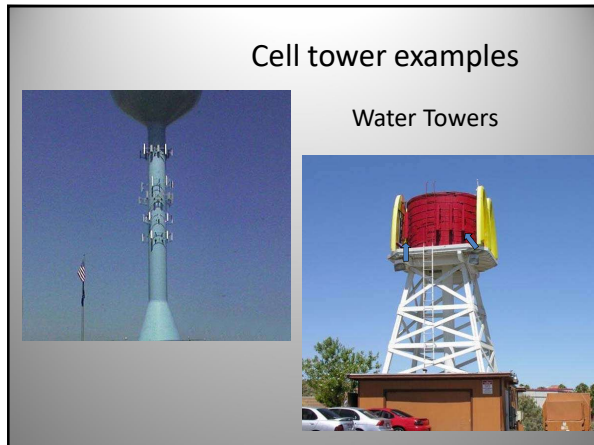
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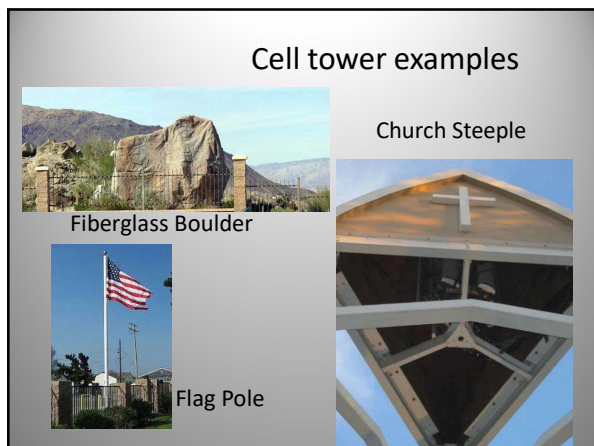
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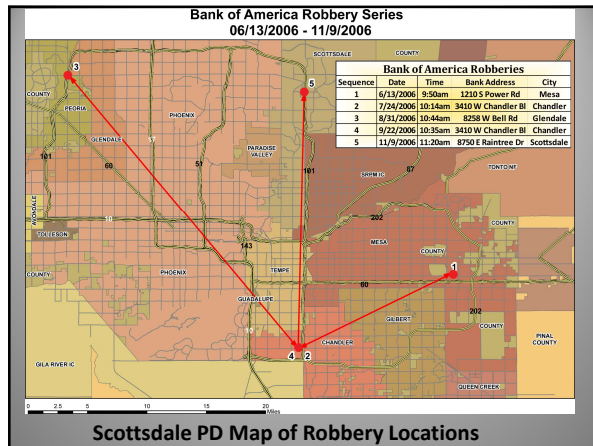
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### Cell Phone Records

- FBI received records from Cingular/AT&T.
- Toll records for Goulding's cell phone, (480) 768-7192, beginning 06/13/2006 to 11/13/2006.
- Cingular/AT&T cell tower records only available for the August, September, and November robberies.
- Records show Goulding's general movement while using his phone matches the travel necessary to commit both pre-robbery surveillance and the robberies.

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### Stipulation of Fact

- Phone Number (480) 768-7192 is registered to the defendant, Chad Michael Goulding, and is the defendant's cell phone.
- The defendant was the only person to possess and/or use this cell phone (480) 768-7192, from June 2006 through November 10<sup>th</sup> 2006.

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## Stipulation of Fact

- The defendant was the only person to possess and/or use this cell phone (480) 768-7192 on the following dates:
  - August 29, 2006
  - August 30, 2006
  - August 31, 2006
  - September 21, 2006
  - September 22, 2006
  - November 6, 2006
  - November 7, 2006
  - November 8, 2006
  - November 9, 2006

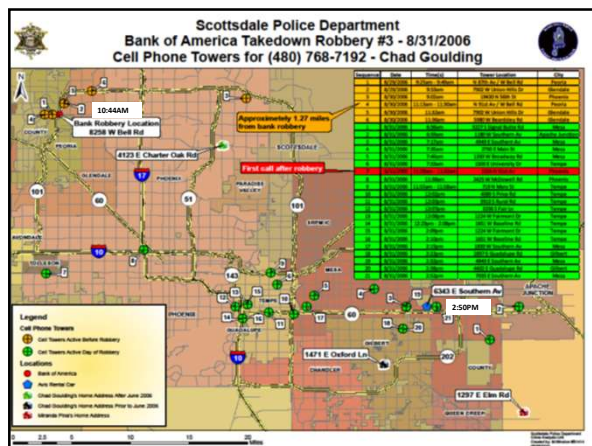


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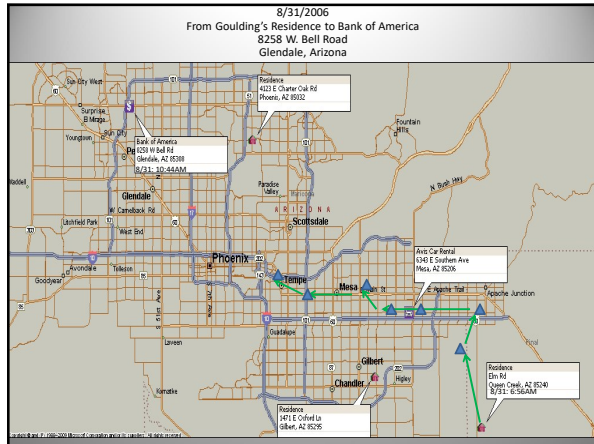
## Glendale Robbery – 08/31/2006

- Cell phone records reflect pre-surveillance
  - 08/29/2006, between 9:25-9:49 a.m.  
Goulding's phone used closest cell tower to the bank
  - 08/30/2006, makes calls at 9:53 and between 11:13 and 11:32 a.m. using a cell tower within a mile and a half of the bank
  - No other record of Goulding using these towers before or after pre-surveillance dates

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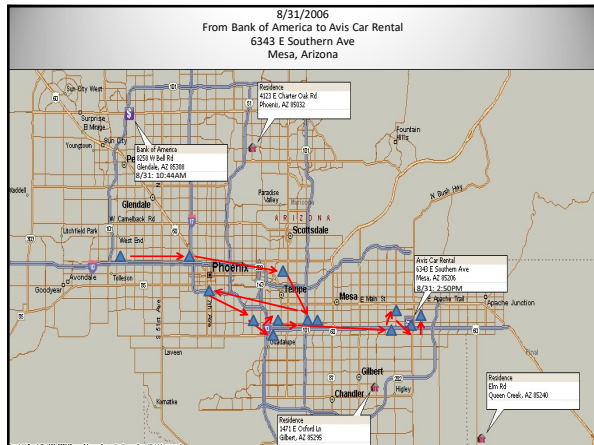
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Seven home invasion robberies committed over a 90 day period by the same suspect.

-Traditional law enforcement methods used  
-One victim reports that suspect used phone during robbery



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Identification of Justin Martin as a suspect



-Obtaining assistance from other agencies  
-Placement of GPS tracking device  
-Martin arrested in Paradise Valley  
-Search warrant at Martin's residence  
-Martin committed at least 3 of the home invasion with his uncle, Darrell Thompson who was wearing an ankle monitoring device

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2<sup>nd</sup> Home Invasion  
10/26/09 at approximately 8:15pm  
Williams Residence

- Man with black ski mask confronted couple in garage
- Defendant had handgun
- Couple was tied up with zip ties
- Mr. Williams got hand loose and fought with Defendant
- Couple was able to escape
- While Defendant was in house he used cell phone
- Defendant took their vehicle

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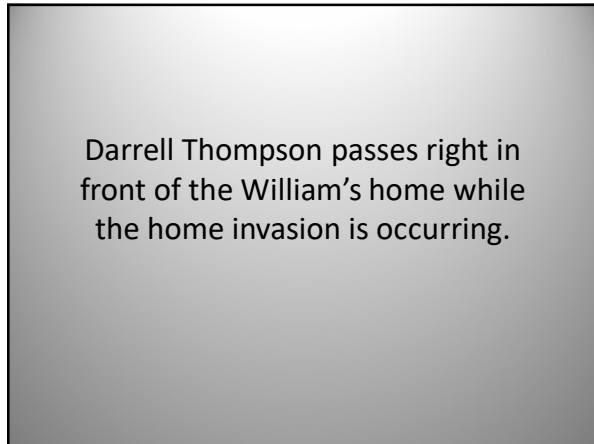
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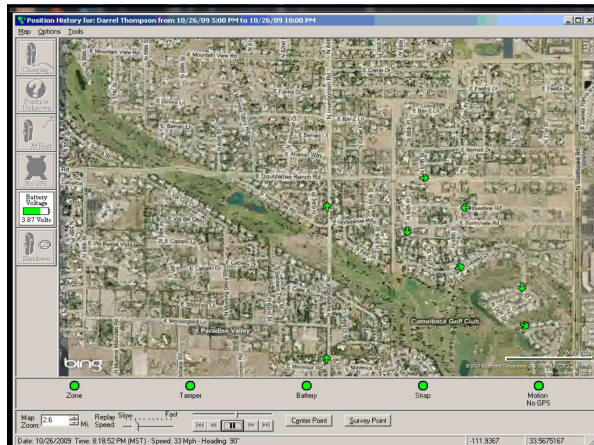
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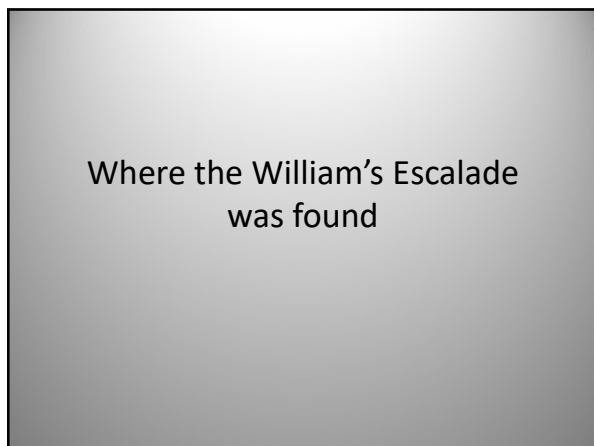
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**Darrell Thompson's Testimony:**

- Has been consistent from the beginning
- Pled guilty
- GPS ankle bracelet

**Justin Martin's Girlfriend's Testimony:**

- Defendant's Financials
- Watching the news
- Not responding quickly
- Text Messages (Text time difference)
- Practice Schedule/Hair Appointment

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**LEGAL ISSUES**

- Objection to cell phone/tower testimony
- ARS 702 Testimony by Expert Witnesses:
- A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.
- Junk Science
- Courts in other jurisdictions
- Defense Experts

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Issue: Does the warrantless search and seizure of cell phone records, which include the location and movement of cell phone users, violate the fourth amendment?

Currently, there is no Arizona case law dealing specifically with this issue.

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Carpenter v. United States, -- U.S. --, 138 S. Ct. 2206 (2018) – Warrant Needed

- Summary: Cell-site location information (CSLI) is generated every time a phone connects to a cell site, and wireless carriers collect this information for their own business purposes. FBI obtained such records about robbery suspects under the Stored Communications Act. There were about 13,000 points located over 127 days.
- Holding: This constituted a search, and violated the suspects' privacy interests, under the Fourth Amendment. **The FBI should have obtained a warrant for the CSLI data.**
- Reasoning: Over time, privacy interests have evolved with the invention of new technologies. CSLI data deserves such protection, because it contains private and accurate information about how people conduct their lives in real time and for up to five years prior. The third-party doctrine is irrelevant to CSLI data, because this information is so detailed and exhaustive. Additionally, cell phones are a necessity of modern life, and persons owning a cell phone under such circumstances does not constitute the affirmative act of sharing.

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On retroactivity

- *People v. Cutts*, 88 N.Y.S.3d 332 (N.Y. App. Div. 2018); *Reed v. Commonwealth*, 819 S.E.2d 446, 339-40 (Va. App. 2018) - *Carpenter* does not apply retroactively.
- In *Cutts*, The Defendant was already convicted, and the conviction was final before *Carpenter* was decided so the court determined that the Defendant was barred from raising this issue.
- In *Reed*, the court determined that the good faith exception applied and that the exclusionary rule did not apply since law enforcement relied on existing law and there was no police or government conduct that needed to be deterred at the time it occurred.
- *But see Dixon v. State*, 07-16-0058-CR, 2018 WL 6581709, at \*9-10 (Tex. App. Dec. 13, 2018) – *Carpenter* applies retroactively, because "newly announced rules of constitutional criminal procedure must apply retroactively without exception to all cases, state or federal, pending on direct view or not yet final." In such an analysis, the court referred to *Davis v. United States*, 564 U.S. 229, 243, 244 (2011) and *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987). However, admission of such is not per se harmful; it only caused harm and warrants error where the CSLI data beyond a reasonable doubt contributed to the conviction or punishment. There was strong evidence otherwise supporting the conviction and although the admission of CSLI evidence was erroneous it was deemed harmless error and that it did not contribute to the Defendant's conviction.

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- On real-time CSLI data
- *Sims v. State*, PD-0941-17, 2019 WL 208631, at \*7 (Tex. Crim. App. Jan. 16, 2019) – *Carpenter* applies to historical CSLI as well as real-time CSLI. However, a certain amount of such information must be used by police before the person's privacy interests apply. There is no Brightline rule about such, and it need be determined on a case-by-case basis. In this case, five "pings" over three hours was not enough. Best practice – **obtain a warrant.**
- On the applicability of the good faith exception
- *Ferrari v. State*, 4D14-464, 2018 WL 6132264, at \*7 (Fla. Dist. Ct. App. Nov. 21, 2018) - **The good faith exception to the exclusionary rule does not apply to CSLI data.** Although at the time of the search in this case, *Carpenter* was not yet law, Florida courts expressed that law about historical CSLI was unsettled at that time. The detective therefore had no precedent upon which to rely when he accessed the CSLI data via subpoena. The court held that the good faith exception did not apply because the search violated the 4<sup>th</sup> Amendment since a subpoena was used to obtain the CSLI data instead of a warrant. **Obtain a warrant.**

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- On IMSI
- *State v. Sylvestre*, 254 So.3d 986, 991-92 (Fla. Dist Ct. App. 2018) – Law enforcement **must obtain a warrant** for their use of a cell-site simulator (IMSI catcher) - (intercepting a signal that the user intended to send to a carrier's cell-site tower or independently pings a cell phone to determine its location).

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MODERN CELL PHONE BOOTH



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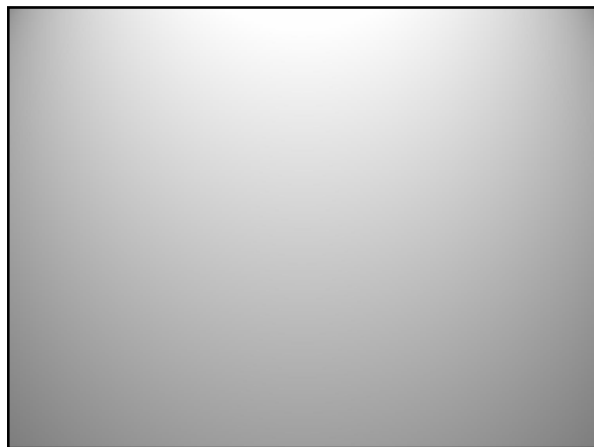
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